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2                   **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3                   **WESTERN DISTRICT OF MISSOURI**  
                  **SOUTHERN DIVISION**

4 **UNITED STATES OF AMERICA,**            ) **Case No. 17-03135-01-CR-S-SRB**  
  )  
5                   **Plaintiff,**                ) **Springfield, Missouri**  
  ) **May 29, 2018**  
6 **v.**    )  
  )  
7 **GENARD ALONSO TONEY,**                )  
  )  
8                   **Defendant.**                )  
  )  
\_\_\_\_\_)

9  
10                   **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**  
11                   **BEFORE THE HONORABLE DAVID P. RUSH**  
                  **UNITED STATES MAGISTRATE JUDGE**

12 **APPEARANCES:**

13 For the Plaintiff:                   Mr. Nhan D. Nguyen  
  Assistant United States Attorney  
14                                        901 St. Louis St., Ste. 500  
  Springfield, MO 65806  
  (417) 831-4406

15 For the Defendant:                Mr. Stuart P. Huffman  
16                                        1848 South Country Hill Lane  
  Springfield, MO 65809  
17                                        (417) 882-7400

18 Court Audio Operator:            Ms. Karla Berziel

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24  
25 Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

1 (Court in Session at 9:03 a.m.)

2 THE COURT: Calling in *United States vs.* -- is it  
3 Genard?

4 MR. TONEY: Genard.

5 THE COURT: *Genard Toney*. The defendant appears in  
6 person along with his attorney, Mr. Stuart Huffman. The United  
7 States appears by Assistant United States Attorney, Mr. Nhan  
8 Nguyen on behalf of AUSA, Ms. Ami Miller. This matter is set  
9 this morning for a stand-up plea to Counts One and Two of the  
10 Indictment that was returned against the defendant on December  
11 12<sup>th</sup>, 2017. Mr. Toney, you have signed a consent to have these  
12 proceedings for a plea of guilty before a Magistrate Judge, with  
13 the understanding that a United States District Judge, a judge of  
14 higher jurisdiction, will keep your case for acceptance of the  
15 pleas of guilty and sentencing. Even though you signed this  
16 consent you have a right, if you wish, to appear before a United  
17 States District Judge, a judge of higher jurisdiction, for these  
18 proceedings. At any appearance before the District Judge, you're  
19 presumed innocent until such time, if ever, as the Government  
20 establishes your guilt beyond a reasonable doubt to the  
21 satisfaction of the judge or jury. You always have a right to  
22 confront and cross-examine witnesses. You have a right to use  
23 the power of the court to subpoena evidence on your behalf and  
24 you have a right to testify or not testify as you would choose.  
25 And if you chose not to testify it would not be held against you

1 as that is your right. If, after understanding the charges  
2 against you, the range of punishment, if convicted, and your  
3 right to appear before a District Judge, if you wish, you may  
4 waive or give up that right and proceed this morning before the  
5 Magistrate Judge. As I indicated, you have signed such a  
6 consent. Do you understand that you have a right to appear  
7 before a United States District Judge, a judge of higher  
8 jurisdiction, for these proceedings?

9 MR. TONEY: Yes, sir.

10 THE COURT: And is it your desire to give up that right  
11 and proceed this morning before the Magistrate Judge?

12 MR. TONEY: Yes, sir.

13 THE COURT: And I'll just ask if you'd just speak up  
14 just a little bit. I can hear you but there is a recording being  
15 made of this hearing and a transcript will be made. Mr. Toney,  
16 do you understand the charge against you in Count One of the  
17 Indictment in this case?

18 MR. TONEY: Yes, sir.

19 THE COURT: Do you understand that if convicted of the  
20 charge in Count One, that the minimum penalty the court may  
21 impose is not less than 15 years imprisonment, while the maximum  
22 penalty the court may impose is not more than 30 years  
23 imprisonment, not more than a \$250,000 fine, not less than five  
24 years supervised release or life supervised release, an Order of  
25 Restitution, a \$5,000 JVTA special assessment, and a \$100

1 mandatory special assessment?

2 MR. TONEY: Yes, sir.

3 THE COURT: To the charge in Count One, how do you wish  
4 to plead, guilty or not guilty?

5 MR. TONEY: Guilty.

6 THE COURT: Do you understand the charge against you in  
7 Count Two of the Indictment in this case?

8 MR. TONEY: Yes, sir.

9 THE COURT: Do you understand that if convicted of the  
10 charge in Count Two, that the minimum penalty the court may  
11 impose is not less than 5 years imprisonment, while the maximum  
12 penalty the court may impose is not more than 20 years  
13 imprisonment, not more than a \$250,000 fine, again not less than  
14 five years supervised release or a life term of supervised  
15 release, an order of restitution, a \$5,000 JVTa special  
16 assessment, and a \$100 mandatory special assessment?

17 MR. TONEY: Yes, sir.

18 THE COURT: To the charge in Count Two, how do you wish  
19 to plead, guilty or not guilty?

20 MR. TONEY: Guilty.

21 THE COURT: Would you please raise your right hand as  
22 best you can?

23 GENARD ALONSO TONEY, DEFENDANT, SWORN

24 THE COURT: Has anyone made any threat of any kind to  
25 force you to plead guilty or give up any of the other rights

1 we've discussed this morning?

2 MR. TONEY: No, sir.

3 THE COURT: Has anyone made any promise of any kind to  
4 induce you or overcome your will to get you to plead guilty or  
5 give up any of the other rights we've discussed this morning

6 MR. TONEY: No, sir.

7 THE COURT: I mentioned to you that there was a  
8 supervised release term of not less than 5 years or up to life  
9 supervised release that could be imposed in your case as to both  
10 Counts One and Two. Do you understand that if the term of  
11 supervised release were imposed and then revoked for any reason,  
12 that you could be required to serve an additional term of  
13 imprisonment of not more than three years as to Count One and not  
14 more than two years as to Count Two, unless the provisions of 18  
15 U.S.C. Section 3583(k) supersede Section 3583(e)(3) in which case  
16 the court must impose a sentence of not less than five years as  
17 to Counts One and/or Two, and if that happened, you would receive  
18 no credit for any other time you had spent either in custody or  
19 on release?

20 MR. TONEY: Yes, sir.

21 THE COURT: Do you understand that the District Court  
22 could then impose an additional term of supervised release as to  
23 both Counts One and Two, which is governed by the maximum of the  
24 statute applicable to each count, minus any time you'd spent in  
25 custody as a result of a violation?

1 MR. TONEY: Yes, sir.

2 THE COURT: Do you understand, Mr. Toney, that by  
3 pleading guilty to Counts One and Two that you will be required  
4 under the Sex Offender Notification and Registration Act to  
5 register as a sex offender and keep the registration current in  
6 each of the following jurisdictions: where you reside, where you  
7 are employed, and where you are a student?

8 MR. TONEY: Yes, sir.

9 THE COURT: Do you understand that from a sentence  
10 imposed in your case that there is no parole?

11 MR. TONEY: Yes, sir.

12 THE COURT: Do you understand that there are Sentencing  
13 Guidelines to which the District Court or the sentencing court  
14 would refer to in an advisory capacity when attempting to fashion  
15 a reasonable sentence in your case?

16 MR. TONEY: Yes, sir.

17 THE COURT: Have you discussed the guidelines with Mr.  
18 Huffman?

19 MR. TONEY: Yes, sir.

20 THE COURT: And do you understand them?

21 MR. TONEY: Yes, sir.

22 THE COURT: Do you understand that the final decision as  
23 to how the guidelines are calculated and ultimately what sentence  
24 will be imposed rests with the District Judge?

25 MR. TONEY: Yes, sir.

1 THE COURT: If the District Judge would calculate the  
2 guidelines differently from what you've discussed with your  
3 attorney, that fact would not give you the right to withdraw or  
4 change your plea of guilty. Do you understand that?

5 MR. TONEY: Yes, sir.

6 THE COURT: Once the Judge establishes the advisory  
7 guideline range, in some circumstances, you could be sentenced  
8 above that range and, in other circumstances, you could be  
9 sentenced below that range. And again, the judge's decision, if  
10 you disagreed, would not give you the right to withdraw your plea  
11 of guilty. Do you understand that?

12 MR. TONEY: Yes, sir.

13 THE COURT: Now, Mr. Toney, you have a right to a trial  
14 by jury with all the protections that I explained to you at the  
15 beginning of these proceedings. Do you understand your right to  
16 a trial by jury?

17 MR. TONEY: Yes, sir.

18 THE COURT: And do you understand that if the court  
19 accepts your pleas of guilty that there won't be a trial?

20 MR. TONEY: Yes, sir.

21 THE COURT: Now I'm going to ask you about the offenses  
22 charged in Count One and Two of the Indictment. I would remind  
23 you that you are under oath. You must answer truthfully. Any  
24 false answers could result in charges of false swearing or  
25 perjury. You always have a right to remain silent. Mr. Nguyen,

1 it's my understanding that the parties have come to an agreement  
2 as to the factual basis in this case and I'll ask if there is any  
3 record you'd like to make at this time?

4 MR. NGUYEN: Yes, Your Honor. The parties have come to  
5 an agreement and it's in Government's Exhibit "A" which the  
6 Government would like to introduce but as of this time. That  
7 exhibit is titled "Government's Factual Basis and Offer of Proof  
8 for Guilty Plea." It's been signed by the Government, along with  
9 the defendant, along with Mr. Huffman, attorney for the  
10 defendant. May I approach, Your Honor?

11 THE COURT: Certainly. And are you asking that it be  
12 filed under seal? Or what?

13 MR. NGUYEN: No, Your Honor.

14 THE COURT: Mr. Toney, I'm reviewing -- any objection,  
15 Mr. Huffman?

16 MR. HUFFMAN: No, Your Honor.

17 THE COURT: Government's Exhibit "A" will be admitted as  
18 part of the record for the plea. Mr. Toney, have you read the  
19 Government's Factual Basis and Offer of Proof for Guilty Plea  
20 which has been admitted at Exhibit "A"?

21 MR. TONEY: Yes, sir.

22 THE COURT: And did you review it and go over it with  
23 your attorney?

24 MR. TONEY: Yes, sir.

25 THE COURT: And then you've signed it?



1 MR. TONEY: Yes, sir.

2 THE COURT: Are the statements set forth in the  
3 Government's Factual Basis and Offer of Proof for Guilty Plea --  
4 are they true?

5 MR. TONEY: Yes, sir.

6 THE COURT: Did you do the things that it says in  
7 here --

8 MR. TONEY: Yes, sir.

9 THE COURT: -- that they can prove?

10 MR. TONEY: Uh-huh.

11 THE COURT: Mr. Huffman, you've had access to the  
12 Government's discovery file, have you not?

13 MR. HUFFMAN: I have, Your Honor.

14 THE COURT: And based upon your review of the discovery  
15 file, are you satisfied if put to proof, that the United States  
16 could make a submissible case as to the elements pertaining to  
17 Counts One and Two of the Indictment as set forth in the  
18 Government's Factual Basis and Offer of Proof for Guilty Plea?

19 MR. HUFFMAN: Yes, Your Honor.

20 THE COURT: There is an adequate factual basis for the  
21 pleas of guilty to Counts One and Two. I find that the plea is  
22 voluntary and did not result from force, threats or promises.  
23 Mr. Toney, you are represented in this case by Mr. Huffman. Have  
24 you had enough time to talk with him about your case?

25 MR. TONEY: Yes, sir.

1 THE COURT: Are you satisfied with the advice that he's  
2 given you?

3 MR. TONEY: Yes, sir.

4 THE COURT: The law requires me to ask you if this  
5 morning you are on any medication prescribed by a physician or  
6 any drugs or alcohol of any kind which would affect your ability  
7 to understand these proceedings?

8 MR. TONEY: No, sir.

9 THE COURT: Understanding that and the other matters  
10 that we've discussed this morning, is it your desire for the  
11 court to accept these pleas of guilty?

12 MR. TONEY: Yes, sir.

13 THE COURT: Mr. Nguyen, on behalf of the United States,  
14 do you have any other record under Rule 11 that you think I need  
15 to make?

16 MR. NGUYEN: No, Your Honor. Thank you.

17 THE COURT: Mr. Huffman, on behalf of the defendant, do  
18 you have any other record under Rule 11 that you think I need to  
19 make?

20 MR. HUFFMAN: No, Your Honor. Thank you.

21 THE COURT: I will recommend the pleas of guilty be  
22 accepted and I will order a Presentence Investigation to be  
23 conducted by the Probation Office. With that, we'll be in  
24 recess.

25 (Court Adjourned at 9:14 a.m.)

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5  
6 I certify that the foregoing is a correct transcript  
7 from the electronic sound recording of the proceeding in the  
8 above-entitled matter.

9  
10 /s/ Lissa C. Whittaker  
Signature of transcriber

June 3, 2018  
Date